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Supreme Court, U.S.
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# Supreme Court of the United States

OCTOBER TERM, 1988

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IN RE THE BIBLE SPEAKS,

*Debtor.*

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THE BIBLE SPEAKS, INC.,

*Petitioner,*

v.

ELIZABETH DOVYDENAS,

*Respondent.*

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**On Petition For A Writ Of Certiorari To The United States Court of Appeals for the First Circuit**

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## BRIEF FOR THE NATIONAL COUNCIL OF THE CHURCHES OF CHRIST IN THE U.S.A. AND COUNCIL ON RELIGIOUS FREEDOM AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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## INTEREST OF THE *AMICI CURIAE*

The national religious bodies entering this brief as *amici curiae* are deeply concerned about the implications of this case, not only for The Bible Speaks, but for their own interests.

The National Council of the Churches of Christ in the U.S.A. is a cooperative agency of 32 national Protestant and Eastern Orthodox religious bodies in the United States, having an aggregate membership of over 40,000,000. This brief does not purport to represent the views of all of those persons, but is based on policy determined by their representatives sitting as the Governing Board of the National Council of Churches, a deliberative body of about 250 persons, chosen by the member denominations in proportion to their size and support of the Council. The policy which underlies this action was expressed by the Board in 1955: "The National Council of Churches defends the rights and liberties of cultural, racial and religious minorities." Policy Statement: Religious and Civil Liberties in the U.S.A.

The Council on Religious Freedom is a nonprofit corporation formed to uphold and promote the principles of religious liberty. The Council grew from the religious liberty concerns of the late John Hedrick whose substantial gifts to the Council, in large part, underwrote its formation and its continuing activities on behalf of religious freedom for all.

The objectives and purposes of the organization include promoting the constitutional principle of the free exercise of religion, opposing any encroachment by governmental agencies which would limit or tend to inhibit such exercise, and responding to other areas

of concern which interfere with the full experience of religious freedom.

The Council is a membership organization with dues-paying members located throughout the United States. The Board of Directors of the Council on Religious Freedom is composed of individuals who are active in religious affairs, some in an official capacity, and some on a lay basis, but all recognize the importance of preserving and promoting the right of religious organizations to carry out their ministries free from governmental intrusion, whether that interference be from the executive, legislative, or judicial branches of the government.

Respondent's claims threaten the fundamental principles of freedom of religion and separation of church and state enshrined in the First Amendment. The matters respondent would have the courts regulate—solicitations for contribution to religious bodies and the contributions themselves—are inextricably intertwined with religious doctrine and are essential both to the existence of churches and to the individual's involvement in a religion.

*Amici* are appalled at the prospect that disgruntled members of any religious body could assert a cause of action that transforms the attractiveness a religious body once had for an adherent into a claim of undue influence, in order to permit that adherent to recover contributions the adherent made to that group. To permit such a claim to persist would be to place in jeopardy a religious body's ability to rely upon funds contributed to it, without which that body would be unable to pursue its religious activities.

Practically speaking, a precedent permitting dissident and alienated former adherents of a religious

body to go to court against that body and recover contributions made during the period of adherence would be terribly threatening for religious bodies. How would a religious body protect itself against such a threat, short of putting all of its contributed income in perpetual escrow, against the possibility that someday it might have to return those contributions to disaffected members?

*Amici* have no acquaintance with The Bible Speaks or its leadership and do not necessarily agree with their teachings nor approve their practices.

## SUMMARY OF ARGUMENT

This case presents the crucial question of the extent to which the judicial branch of government may be utilized by a former adherent to a particular religious faith to recover religiously-motived church contributions, after later renouncing that faith by claiming "undue influence." In this case, respondent Elizabeth Dovydenas, a wealthy former member of The Bible Speaks Church, after undergoing a "religious deprogramming" during which time "exit counselors" altered her views toward her former church, filed an action to recover her previous contributions which contributions, had been utilized in the work of the church.

Permitting disgruntled former members of a religious body to maintain a cause of action for recovery of their earlier contributions to their church on the theory of "undue influence" places in jeopardy the religious body's ability to rely upon funds contributed to it without which that body would be unable to pursue its religious activities. Such an action requires a court to determine, in the religious domain, what

influence is or is not "due." To make such an assessment, a court necessarily becomes involved in adjudicating the religious validity of a church member's statements. It also requires civil courts to intrude into religious affairs.

This Court has repeatedly followed the principle that courts are prohibited from assessing the validity of any religious faith. However, only by assessing the validity of a religious belief may the Court discern what religious influence is or is not "due."

*Amici* believe that it is constitutionally inappropriate for a court to determine in retrospect whether a former church member's contribution was or was not motivated by her religious belief and whether a pastor's influence in encouraging such a contribution was or was not a valid religious expression. Permitting liability to be imposed in this case imposes on religious organizations a chill on their absolute First Amendment rights to teach their doctrine to, and receive contributions from, their membership without fear that the basic exercise of freedom of religion will subject them to trial in a court of law.

*Amici* believe that absent fraud or coercion and grave physical or mental disability on the part of a religious donor, the presumption should be that a person making a voluntary contribution to a religious organization has a right to make such a gift, and the organization receiving it to use it, without subsequent repudiation of intent and recovery of the gift.

## ARGUMENT

### THE QUESTIONS RAISED BY THE PETITION REGARDING THE RIGHT OF A FORMER ADHERENT TO A PARTICULAR RELIGIOUS FAITH TO USE THE COURTS TO RECOVER RELIGIOUSLY-MOTIVATED CHURCH CONTRIBUTIONS, AFTER LATER RENOUNCING THAT FAITH BY CLAIMING "UNDUE INFLUENCE" RAISES SERIOUS, BUT UNSETTLED, FIRST AMENDMENT CONCERNS FOR ALL RELIGIOUS BODIES THAT SHOULD BE ADDRESSED BY THIS COURT.

Petitioner, The Bible Speaks Church, is a small, fundamentalist Christian church. Respondent Elizabeth Dovydenas is a wealthy former member of that church who made substantial contributions to her church during the period of her membership. Mrs. Dovydenas was at all pertinent times a competent, married adult.

Respondent's family members became unhappy with her large church contributions and hired two so-called "exit counselors" to perform a religious deprogramming. Mrs. Dovydenas was lured away, under the pretense of a birthday celebration for her father, to a rented house in Minnesota where she underwent a week-long episode of religious faithbreaking. During this time she was shown videotapes about various cults during which her own religion was repeatedly put into question by the "exit counselors." This process resulted in respondent's views of her church being radically altered. Mrs. Dovydenas thereafter instituted this action for a return of her church contributions.

It is clear even from the facts found by the trial court—distorted as they may be—that respondent Dovydenas was enthusiastically caught up in the work of The Bible Speaks at the time she made two large

donations whose restitution this case involves. She decided to give $1,000,000 and later $5,000,000 to the work of The Bible Speaks on her own, without coercion or duress, while she was in complete control of her faculties. In the latter instance she was a thousand miles away from the church, with abundant opportunity to obtain independent advice, some of which was indeed vouchsafed to her by her husband, her financial advisers, her uncle, and her father, but which she deliberately and freely declined to follow.

Mrs. Dovydenas' decisions may not have been thought by her family or the fact-finder to have been wise, "prudent," or to have afforded the greatest possible tax advantage; but those considerations did not apparently weigh heavily with her, as indeed they often do not—perhaps *should* not—with people caught up in a consuming concern about the salvation of their souls or the coming of the Kingdom of God. Indeed, it is one of the common concerns of religion to free people from precisely such "prudent" pre-occupations with material possessions in order to open themselves to spiritual growth. The Gospel preached and supposedly believed by Christians has some radical advice about such matters:

> Do not lay up for yourselves treasures on earth, where moth and rust consume and where thieves break in and steal, but lay up for yourselves treasures in heaven, where neither moth nor rust consumes and where thieves do not break in and steal. For where your treasure is, there will your heart be also.

Matthew 6: 19-21, R.S.V.

Discerning whether Mrs. Dovydenas made donations to The Bible Speaks because of "undue influence" requires a court to determine, in the religious domain, what influence is or is not "due." To make such an assessment, the Court may, as here, become involved in adjudicating the religious validity of a church member's statements. The Court, however, cannot adjudicate the validity of the church member's statements without impermissibly evaluating religious doctrine and thus the validity of religious beliefs themselves.

An examination of this Court's decisions clearly demonstrates the strong prohibition against judicial decision making that intrudes into religious affairs. Civil courts have absolutely no authority to determine any matters of church government, faith, or doctrine. *Presbyterian Church v. Mary E.B. Hull Pres. Church*, 393 U.S. 440 (1969). As this Court has articulated, the design of the First Amendment reflects an awareness by the Fathers of the Constitution

> of the varied and extreme views of religious sects, of the violence of disagreement among them, and of the lack of any one religious creed on which all men would agree. They fashioned a charter of government which envisioned the widest possible toleration of conflicting views. Man's relation to his God was made no concern of the state. He was granted the right to worship as he pleased and to answer to no man for the verity of his religious views. . . . "With man's relations to his Maker and the obligations he may think they impose, and the manner in which an expression shall be made by him of his belief on those subjects, no interference can be permitted. . . ."

*United States v. Ballard*, 322 U.S. 78, 87 (1944) (citations omitted). Based upon such a recognition, the First Amendment precludes judicial determinations of "the truth or verity of religious doctrines or beliefs." *Id.*

The principle that courts are prohibited from assessing the validity of faith is echoed in the court's statements that individuals cannot be required to show that their beliefs are conventional or socially acceptable, *Wisconsin v. Yoder*, 406 U.S. 205, 225 (1972), or that they chose those beliefs by a rational process that is "acceptable, logical, consistent, or comprehensible to others." *Thomas v. Review Bd.*, 450 U.S. 707, 714 (1981).

Adherents who "subject their reason to the demands of faith," D. Kelley, *Deprogramming and Religious Liberty*, 4 Civ. Lib. Rev. 23, 30 (July-Aug. 1977), and demonstrate the depth of their commitment by insisting upon their beliefs as "ultimate concerns," (*see* Tillich, *The Shaking of the Foundations*, 57 (1948), quoted in *United States v. Seeger*, 380 U.S. 163 (1965), should not find the intensity of their faith used as evidence of mind control or undue influence. "Otherwise the fact of adherence to a particular faith could itself become evidence of mind control, and the only way to show control over one's mind would be to renounce one's religion." Comment, *"Mind Control" or Intensity of Faith: The Constitutional Protection of Religious Beliefs*, 13 Harv. C. R. - C. L. L. Rev. 751, 795 (1978). *See also* Shapiro, *Of Robots, Persons, and the Protection of Religious Beliefs*, 56 S. Cal. L. Rev. 1277, 1307-1309 (1983). Only by assessing the validity of the religious faith of the pastor and Mrs. Dovydenas could a court purport to what

religious influence is or is not due. Such an assessment, however, is constitutionally impermissible.

Just as the Constitution prohibits the courts from assessing the validity of faith, so too does it preclude the courts from determining whether the bases of Mrs. Dovydenas' decision to make her gifts to The Bible Speaks and of the pastor's solicitation of those gifts were religious or not. In *Thomas*, the Court stated:

> The determination of what is a "religious" belief or practice is more often than not a difficult and delicate task, . . . . However, the resolution of that question is not to turn upon a judicial perception of the particular belief or practice in question; religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection.

450 U.S. at 714.

In *Thomas* the Court further indicated that in this "sensitive area" the Court does not have the competence to decide religious matters. *Id.* at 716. The Court has also stated that the "prospect of church and state litigating in court about what does or does not have religious meaning touches the very core of the constitutional guarantee against religious establishment." *New York v. Cathedral Academy*, 434 U.S. 125, 133 (1977). To the extent that litigants in this case may be presenting to the court conflicting testimony over what has religious meaning, civil courts are prohibited from resolving such a conflict. *Presbyterian Church v. Mary E.B. Hull Pres. Church*, 393 U.S. 440, 449 (1969).

This Court's explanation for the prohibition against judicial resolutions of what is religious as preventing government preference of one religion over another is quite germane to the case at bar:

> Appellant's sect has conventions that are different from the practices of other religious groups. Its religious service is less ritualistic, more unorthodox, less formal than some. But . . . it is no business of courts to say what is a religious practice or activity for one group is not religion under the protection of the First Amendment. . . . To call the words which one minister speaks to his congregation a sermon, immune from regulation, and the words of another minister an address, subject to regulation, is merely an indirect way of preferring one religion over another.

*Fowler v. State of Rhode Island*, 345 U.S. 67, 69-70 (1953). More recently in *Lyng v. Northwest Indian Cemetery Protective Association*, 108 S.Ct. 1319, 1329-30 (1988), this Court held that the Constitution precludes the courts from holding "that some sincerely held religious beliefs and practices are not 'central' to certain religions." The outcome in *The Bible Speaks* case exemplifies the very outcome, described above by the Court, that the Constitution's prohibition against judicial determination of what is religious was meant to prevent—judicial bias against less conventional religious activity.

It is thus constitutionally inappropriate for a court to determine, in retrospect, both that Dovydenas' church contribution was not motivated by her religious belief and that the pastor's influence in en-

couraging such a contribution was likewise not valid religious expression.

Permitting liability to be imposed in this case inflicts upon religious organizations, including the 32 national Protestant and Eastern Orthodox religions that make up the National Council of Churches of Christ in the U.S.A., a chill on their absolute First Amendment rights to teach their doctrine to, and receive contributions from, their membership without fear that these basic exercises of freedom of religion will subject them to trial in a court of law, where the religious association will be forced to satisfy a group of non-members as to the "truthfulness," "prudence" or orthodoxy of its doctrine. The inevitable result of such a chill is ministerial self-censorship and prior restraint—concepts which are contrary to the protections granted by the First Amendment.

It is the "business" of a religious body to preach its gospel to all who will hear, to attract adherents, to make converts, to enlist them in whole-hearted obedience to its precepts, to warn them against temptations and evil influences, and to elicit the most generous support possible from them for the advancement of its work. In so doing, the religious body may well act in ways that could be characterized, in resentful retrospect, just as the petitioner's activities have been characterized by the respondent in this case.

A retrieved reformation, as in this case, with its intervention by euphemistically titled "exit counselors," its reconstruction of past events with the help of self-justifying anti-cult animus, and its demand for the return of contributions freely given out of sincerely-held commitment and since abandoned (contributions subsequently expended for the donor's

intended purpose) if enforceable by the courts, would represent a threat to the validity of adherence, the financial stability of organizations heavily dependent upon voluntary contributions, and the very meaning of "voluntary" itself.

No fraud or other criminal wrongdoing is even alleged in this case, only that the church and its leaders exercised "undue influence" on a susceptible but healthy, free, intelligent, alert, and self-determining adherent. Absent fraud or coercion and absent grave physical or mental disability on the part of the donor, the presumption should be that a person making a voluntary contribution to a religious or other organization has a right to make such a gift, and the organization to receive and use it, without subsequent repudiation of intent and recovery of the gift.

For a court to permit a responsible adult to repudiate, on the claim of "undue influence," a past religiously-based decision and to recover a sincerely-made contribution, would be to place in jeopardy the validity of all gifts to all religious organizations which might likewise be subsequently repudiated on similar unprecedented grounds. And when, as here, such restitution effectively demolishes the religious organization, the threat is not just ominous for religious liberty, but devastating.

## CONCLUSION

The Bible Speaks' Petition for Writ of Certiorari should be granted for the reasons set forth above.

Dated: July 5, 1989 Respectfully submitted,

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